

No. 21702

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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COURTESY CHEVROLET, INC., a corporation,

*Appellant,*

*vs.*

TENNESSEE WALKING HORSE BREEDERS' AND EXHIBI-  
TORS' ASSOCIATION OF AMERICA, a corporation,

*Appellee.*

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PETITION FOR REHEARING.

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FILED

MAY 16 1968

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*Attorneys for Appellant and Petitioner.*

WM. B. LUCK, CLERK



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*To the Honorable Chief Justice and the Associate Justices of the United States Court of Appeals for the Ninth Circuit:*

The appellant, Courtesy Chevrolet, Inc., presents this petition for a rehearing of the above cause and, in support thereof respectfully shows:

1. The appeal in the cause was argued before this Court on April 9, 1968.

2. On April 16, 1968, this Court rendered its decision affirming in part and reversing in part and remanding with directions the judgment of the United States District Court for the Central District of California.

3. The appellant seeks a rehearing upon the following grounds:

a. The Judgment of the Court of Appeals fails to consider the question of whether, as a matter of law, plaintiff's evidence of damage is in fact "too indefinite and speculative to permit the Court with any degree of certainty to estimate the amount thereof."

b. The Judgment of the Court of Appeals does not consider whether there was sufficient evidence and relevant data presented to the District Court upon which that Court should have made a reasonable estimate of damages as prescribed in *Elyria-Lorain Broadcasting Co. v. Lorain Journal Co.* (6th Cir. 1966) 358 F. 2d 790, 793 and *Flintkote Company v. Lysfjord* (9th Cir. 1957) 246 F. 2d 368, 392.

c. No determination was made by the Court of Appeals regarding the failure of the District Court to consider or award attorneys' fees for plaintiff's prior attorneys through the time of their prior successful appeal.

d. No determination was indicated by the Court of Appeals regarding plaintiff's application for attorneys' fees in the Court of Appeals.

e. The Court of Appeals did not set forth any guidelines upon which it could be determined how the Court related injunctive relief obtained to damages recovered thereby arriving at an attorneys' fee of \$10,000, although the evidence was that such fees should be \$140,000 to \$150,000.

f. It cannot be determined from the Court's opinion whether it is determining that an award of attorneys' fees in anti-trust litigation must be apportioned between equitable relief and damages awarded.

g. The Court of Appeals has not met the issue of whether the District Court acted properly in failing to determine a reasonable attorneys' fee for plaintiff but instead ruled that the test was what portion of such fees should be borne by the defendant.

h. The Court of Appeals did not rule on appellant's application for attorneys' fees in the Court of Appeals.

i. It cannot be determined from the opinion and judgment of the Court of Appeals how costs on appeal are to be charged or apportioned.

For the foregoing reasons, it is urged that this petition be granted.

Dated: May 15, 1968.

Respectfully submitted,

WARD, HEYLER & DRUTEN,

GUY E. WARD,

*Attorneys for Appellant and Petitioner.*

I hereby certify that the foregoing petition is submitted in good faith and not for purpose of delay.

GUY E. WARD,

*Attorney for Appellant and Petitioner.*

